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January 7, 2021

**Via ECF**

The Honorable Brian M. Cogan  
United States District Judge  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: Gala v. City of New York, et al., 20-CV-5549 (BMC)

Dear Judge Cogan:

We represent the Plaintiff, Michael F. Gala, Jr., in the above-captioned matter. In advance of the initial status conference scheduled for January 12, 2021, and pursuant to Your Honor's November 16, 2020 order,<sup>1</sup> Plaintiff submits this short letter outlining the factual, jurisdictional, and legal basis for the claim in this matter, as well as contemplated motions.

Your Honor directed the submission of a "joint" letter, but Defendants declined. Rather, Defendants have asked us to convey that: (a) they intend to file a motion to dismiss the complaint; (b) they intend to seek a stay of all deadlines pending resolution of that motion; and (c) despite your order, they did not believe a letter needed to be filed until after the Court resolves their upcoming stay request. We disagreed, but were left with no choice other than to file this alone.

**I. Brief Description of the Case**

This is a simple First Amendment retaliation case brought under 42 U.S.C. § 1983. Plaintiff is a Deputy Assistant Chief in the New York City Fire Department ("FDNY"). He alleges that, in May 2020, his slated promotion to Assistant Chief was rescinded by FDNY Commissioner Daniel Nigro because Plaintiff refused to recant views he expressed in a newspaper more than a decade earlier concerning the FDNY's hiring standards. Plaintiff brings this action against the City of New York and Commissioner Nigro (in his individual and official capacity) for unlawfully infringing his First Amendment rights.

Plaintiff asserts that this Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, and 2201, and that venue lies in this District pursuant to 28 U.S.C. §§ 1391(b)(1) and (2). Defendants do not contest jurisdiction or venue.

**II. Defenses and Contemplated Motions**

Defendants have informed Plaintiff that they intend to file a motion to dismiss the complaint, as well as a motion to stay discovery pending resolution of their motion to dismiss. Defendants contend that they have not violated Plaintiff's First Amendment rights because they

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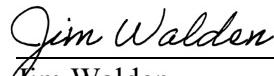
<sup>1</sup> See ECF No. 7 ("Counsel are directed to submit a joint letter to Chambers five days prior to the conference with a brief description of the case, including factual, jurisdictional, and legal basis for the claim(s) and defense(s); and addressing any contemplated motions.").

were justified in withholding his promotion. They also argue that Commissioner Nigro is entitled to qualified immunity. Defendants have not shared any further details about these arguments, and they declined to provide a more thorough description for inclusion in this letter. Plaintiff expects Defendants to file a pre-motion letter by the end of the day today.

As Plaintiff will argue in his response to Defendants' pre-motion letter, Defendants' fact-intensive defenses are meritless and, in any event, cannot be resolved on a motion to dismiss. Further, because a motion to dismiss is not the appropriate means to resolve this lawsuit, and because discovery regarding Plaintiff's straightforward cause of action will not be burdensome, Plaintiff does not believe that a stay of discovery is warranted. Plaintiff, like Defendants, is eager to resolve this matter as expeditiously as possible, and he believes the most effective way to accomplish that goal is by proceeding with discovery immediately, and thereafter moving for summary judgment.

Thank you for your consideration.

Respectfully submitted,

  
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Jim Walden  
Walden Macht & Haran LLP

*Attorney for Plaintiff Michael F. Gala, Jr.*

cc: Steve Stavridis (via ECF)  
Attorney for Defendants